

# REPORT

**DATE:** July 31, 2003

**TO:** The Regional Council

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**SUBJECT:** Federal Legislation: S. 458 “The Southwest Regional Border Authority Act”

**EXECUTIVE DIRECTOR'S APPROVAL:**



**RECOMMENDED ACTION:**

Seek amendments to increase the composition of the Southwest Regional Border Authority to include MPO's as a Co-Chair and allow for the primary implementation of the Authority's duties through existing local planning agencies.

This recommendation is based on the direction received from the Southwest Compact Task Force at their March 5, 2003 meeting and approved by the Transportation and Communications Committee (TCC) at their April 3, 2003 meeting.

**BACKGROUND:**

Senate Bill 458 introduced by Senator Jeff Bingaman (D- New Mexico) establishes the Southwest Regional Border Authority Act, whose primary mission will be to develop plans and programs that will result in increased economic development opportunities along Southwest border communities. The bill is based on four guiding principles:

1. The premise is that the people of the southwest border region know what is best for them (a key component of the bill ensures that local priorities form the foundation of projects approved for funding).
2. Employment of a regional approach towards economic development that encourages communities to work across jurisdictional boundaries.
3. Creation of an economic development entity that is independent.
4. Bring together representatives of the four Southwest border States and the Federal Government as equal partners to improve the quality of life and standard of living for border residents.

The purpose of the Authority is to:

- Establish a regional economic development authority for the Southwest Border Region
- Provide funding to local communities to stimulate development.
- Increase the total amount of Federal funding available for border economic development projects via coordination and reduction of duplication.
- Empower local communities via local development districts and State and regional development plans that reflect state and local priorities.

# REPORT

The communities impacted by the proposal include counties in Arizona, California, New Mexico and Texas. The companion bill in the House of Representatives is H.R. 1071 introduced by Congressman Silvestre Reyes D-Texas. Because Senate Bill 458 is analogous to SCAG's efforts and activities in the establishment of the Southwest Compact, Government Affairs staff has been monitoring the legislation.

## **BACKGROUND:**

If passed, S. 458 would establish the Southwest Regional Border Authority. The Authority would provide resources to conduct investigations and studies on certain border regions with the ultimate goal of developing effective economic development initiatives there. Specifically, the bill calls for the formulation of interstate compacts and other forms of interstate and international cooperative efforts that will encourage private investment in the border region. The legislation also authorizes grants for regional infrastructure development, technology development, community development, entrepreneurship, and education and workforce development opportunities. Lastly, the bill will subsidize up to ten demonstration projects that will result in appropriate modifications to Federal, State, and local economic development programs for the border regions.

If established, the Southwest Regional Border Authority would fulfill an identified SCAG legislative initiative. SCAG's 2003 Legislative Program contains a directive that seeks to advance the concept of the Southwest Compact including activities to secure support for the Compact with representatives of Arizona, New Mexico and Texas. As envisioned, SCAG's Southwest Compact proposal will link Southern California to the regions east to Texas and south to northern Mexico, creating economic links that will create a "super-region" containing the size, diversity, industrial strength, and locational advantages to position itself as an international competitive force.

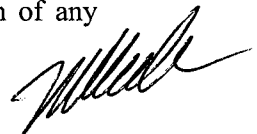
## **BILL STATUS:**

There have been no changes to the language of S.458 since the SCAG Transportation and Communications Committee took action in April 2003. On May 21, 2003, Senator Dianne Feinstein was added as a co-sponsor (Senator Barbara Boxer co-sponsored S.458 at its introduction in February 2002). Senate Bill 458 was introduced February 26, 2003 and was referred to the Senate Environment and Public Works Committee. In the House of Representatives, the Companion bill (to S. 458) H.R. 1071, is before the Full Committee on Transportation and Infrastructure with amendments (from the Sub-Committee on Economic Development). Given the bill's importance to SCAG's legislative program, we have signaled to the author of the agency's interest in assisting them as the legislation gets honed and debated in the 108<sup>th</sup> Congress.

## **FISCAL IMPACT:**

All work related to adopting the recommended staff action is contained within the adopted FY 03/04 budget and adopted 2003 SCAG Legislative Program and does not require the allocation of any additional financial resources.

Attachments



To Establish the Southwest Regional Border Authority.  
IN THE SENATE OF THE UNITED STATES

February 26, 2003

Mr. BINGAMAN (for himself, Mrs. HUTCHISON, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To establish the Southwest Regional Border Authority.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This Act may be cited as the 'Southwest Regional Border Authority Act'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

**TITLE I--SOUTHWEST REGIONAL BORDER AUTHORITY**

Sec. 101. Membership and voting.

Sec. 102. Duties and powers.

Sec. 103. Authority personnel matters.

**TITLE II--GRANTS AND DEVELOPMENT PLANNING**

Sec. 201. Infrastructure development and improvement.

Sec. 202. Technology development.

Sec. 203. Community development and entrepreneurship.

Sec. 204. Education and workforce development.

Sec. 205. Funding.

Sec. 206. Supplements to Federal grant programs.

Sec. 207. Demonstration projects.

Sec. 208. Local development districts; certification and administrative expenses.

Sec. 209. Distressed counties and areas and economically strong counties.

Sec. 210. Development planning process.

**TITLE III--ADMINISTRATION**

Sec. 301. Program development criteria.

Sec. 302. Approval of development plans and projects.

Sec. 303. Consent of States.

Sec. 304. Records.

Sec. 305. Annual report.

Sec. 306. Authorization of appropriations.

Sec. 307. Termination of authority.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS- Congress finds that--

- (1) a rapid increase in population in the Southwest border region is placing a significant strain on the infrastructure of the region, including transportation, water and wastewater, public health, and telecommunications;
  - (2) 20 percent of the residents of the region have incomes below the poverty level;
  - (3) unemployment rates in counties in the region are up to 5 times the national unemployment rate;
  - (4) per capita personal income in the region is significantly below the national average and much of the income in the region is distributed through welfare programs, retirement programs, and unemployment payments;
  - (5) a lack of adequate access to capital in the region--
    - (A) has created economic disparities between communities in the region and communities outside the region; and
    - (B) has made it difficult for businesses to start up in the region;
  - (6) it has been difficult for displaced workers in the region to find employment because many workers--
    - (A) have limited English language proficiency; and
    - (B) lack adequate English language and job training;
  - (7) many residents of the region live in communities referred to as 'colonias' that lack basic necessities, including running water, sewers, storm drainage, and electricity;
  - (8) many of the problems that exist in the region could be solved or ameliorated by technology that would contribute to economic development in the region;
  - (9) while numerous Federal, State, and local programs target financial resources to the region, those programs are often uncoordinated, duplicative, and, in some cases, unavailable to eligible border communities because those communities cannot afford the required funding match;
  - (10) Congress has established several regional economic development commissions, including the Appalachian Regional Commission, the Delta Regional Authority, and the Denali Commission, to improve the economies of those areas of the United States that experience the greatest economic distress; and
  - (11) many of the counties in the region are among the most economically distressed in the United States and would benefit from a regional economic development commission.
- (b) PURPOSES- The purposes of this Act are--
- (1) to establish a regional economic development authority for the Southwest Border region to address critical issues relating to the economic health and well-being of the residents of the region;
  - (2) to provide funding to communities in the region to stimulate and foster infrastructure development, technology development, community development and entrepreneurship, and education and workforce development in the region;
  - (3) to increase the total amount of Federal funding available for border economic development projects by coordinating with and reducing duplication of other Federal, State, and local programs; and
  - (4) to empower the people of the region through the use of local development districts and State and regional development plans that reflect State and local priorities.

### **SEC. 3. DEFINITIONS.**

In this Act:

- (1) ATTAINMENT COUNTY- The term 'attainment county' means an economically strong county that is not a distressed county or a competitive county.
- (2) AUTHORITY- The term 'Authority' means the Southwest Regional Border Authority established by section 101(a)(1).
- (3) BINATIONAL REGION- The term 'binational region' means the area in the United States and Mexico that is within 150 miles of the international border between the United States and Mexico.
- (4) BUSINESS INCUBATOR SERVICE- The term 'business incubator service' means--
  - (A) a legal service, including aid in preparing a corporate charter, partnership agreement, or contract;
  - (B) a service in support of the protection of intellectual property through a patent, a trademark, or any other means;
  - (C) a service in support of the acquisition or use of advanced technology, including the use of Internet services and Web-based services; and
  - (D) consultation on strategic planning, marketing, or advertising.

- (5) **COMPETITIVE COUNTY**- The term 'competitive county' means an economically strong county that meets at least 1, but not all, of the criteria for a distressed county specified in paragraph (5).
- (6) **DISTRESSED COUNTY**- The term 'distressed county' means a county in the region that--
- (A)(i) has a poverty rate that is at least 150 percent of the poverty rate of the United States;
  - (ii) has a per capita market income that is not more than 67 percent of the per capita market income of the United States; and
  - (iii) has a 3-year unemployment rate that is at least 150 percent of the unemployment rate of the United States; or
  - (B)(i) has a poverty rate that is at least 200 percent of the poverty rate of the United States; and
  - (ii)(I) has a per capita market income that is not more than 67 percent of the per capita market income of the United States; or
  - (II) has a 3-year unemployment rate that is at least 150 percent of the unemployment rate of the United States.
- (7) **ECONOMICALLY STRONG COUNTY**- The term 'economically strong county' means a county in the region that is not a distressed county.
- (8) **FEDERAL GRANT PROGRAM**- The term 'Federal grant program' means a Federal grant program to provide assistance in--
- (A) acquiring or developing land;
  - (B) constructing or equipping a highway, road, bridge, or facility; or
  - (C) carrying out other economic development activities.
- (9) **INDIAN TRIBE**- The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (10) **ISOLATED AREA OF DISTRESS**- The term 'isolated area of distress' means an area located in an economically strong county that has a high rate of poverty, unemployment, or outmigration, as determined by the Authority.
- (11) **LOCAL DEVELOPMENT DISTRICT**- The term 'local development district' means an entity that--
- (A)(i) is an economic development district that is--
    - (I) in existence on the date of enactment of this Act;
    - (II) recognized by the Economic Development Administration; and
    - (III) located in the region; or
  - (ii) if an entity described in clause (i) does not exist--
    - (I) is organized and operated in a manner that ensures broad-based community participation and an effective opportunity for local officials, community leaders, and the public to contribute to the development and implementation of programs in the region;
    - (II) is governed by a policy board with at least a simple majority of members consisting of--
      - (aa) elected officials; or
      - (bb) designees or employees of a general purpose unit of local government that have been appointed to represent the unit of local government; and
    - (III) is certified by the Governor or appropriate State officer as having a charter or authority that includes the economic development of counties, portions of counties, or other political subdivisions within the region; and
  - (B) has not, as certified by the Federal cochairperson--
    - (i) inappropriately used Federal grant funds from any Federal source; or
    - (ii) appointed an officer who, during the period in which another entity inappropriately used Federal grant funds from any Federal source, was an officer of the other entity.
- (12) **REGION**- The term 'region' means--
- (A) the counties of Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Pima, Pinal, Santa Cruz, and Yuma in the State of Arizona;
  - (B) the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura in the State of California;

- (C) the counties of Catron, Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra, and Socorro in the State of New Mexico; and
- (D) the counties of Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Coke, Concho, Crane, Crockett, Culberson, Dimmit, Duval, Ector, Edwards, El Paso, Frio, Gillespie, Glasscock, Hidalgo, Hudspeth, Irion, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Live Oak, Loving, Mason, Maverick, McMullen, Medina, Menard, Midland, Nueces, Pecos, Presidio, Reagan, Real, Reeves, San Patricio, Shleicher, Sutton, Starr, Sterling, Terrell, Tom Green, Upton, Uvalde, Val Verde, Ward, Webb, Willacy, Wilson, Winkler, Zapata, and Zavala in the State of Texas.
- (13) SMALL BUSINESS- The term 'small business' has the meaning given the term 'small business concern' in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

## **TITLE I--SOUTHWEST REGIONAL BORDER AUTHORITY**

### **SEC. 101. MEMBERSHIP AND VOTING.**

#### **(a) ESTABLISHMENT-**

(1) IN GENERAL- There is established the Southwest Regional Border Authority.

(2) COMPOSITION- The Authority shall be composed of--

(A) a Federal member, to be appointed by the President, by and with the advice and consent of the Senate; and

(B) State members, who shall consist of the Governor (or a designee of the Governor) of each State in the region that elects to participate in the Authority.

(3) COCHAIRPERSONS- The Authority shall be headed by--

(A) the Federal member, who shall serve--

(i) as the Federal cochairperson; and

(ii) as a liaison between the Federal Government and the Authority; and

(B) a State cochairperson, who shall--

(i) be a Governor of a State described in paragraph (2)(B);

(ii) be elected by the State members for a term of not more than 2 years; and

(iii) serve only 1 term during any 4 year period.

#### **(b) ALTERNATE MEMBERS-**

(1) STATE ALTERNATES- The State member of a State described in paragraph (2)(B) may have a single alternate, who shall be--

(A) a resident of that State; and

(B) appointed by the Governor of the State, from among the members of the cabinet or personal staff of the Governor.

(2) ALTERNATE FEDERAL COCHAIRPERSON- The President shall appoint an alternate Federal cochairperson.

(3) QUORUM- Subject to subsection (d)(4), a State alternate member shall not be counted toward the establishment of a quorum of the members of the Authority in any case in which a quorum of the State members is required to be present.

(4) DELEGATION OF POWER- No power or responsibility of the Authority specified in paragraph (2) or (3) of subsection (d), and no voting right of any member of the Authority, shall be delegated to any person who is not--

(A) a member of the Authority; or

(B) entitled to vote at meetings of the Authority.

#### **(c) MEETINGS-**

(1) INITIAL MEETING- The initial meeting of the Authority shall be conducted not later than the date that is the earlier of--

(A) 180 days after the date of enactment of this Act; or

(B) 60 days after the date on which the Federal cochairperson is appointed.

(2) OTHER MEETINGS- The Authority shall hold meetings at such times as the Authority determines, but not less often than semiannually.

(3) LOCATION- Meetings of the Authority shall be conducted, on a rotating basis, at a site in the region in each of the States of Arizona, California, New Mexico, and Texas.

#### **(d) VOTING-**

(1) IN GENERAL- To be effective, a decision by the Authority shall require the approval of the Federal cochairperson and not less than 60 percent of the State members of the Authority (not including any member representing a State that is delinquent under section 102(d)(2)(D)).

(2) QUORUM-

(A) IN GENERAL- A majority of the State members shall constitute a quorum.

(B) REQUIRED FOR POLICY DECISION- A quorum of State members shall be required to be present for the Authority to make any policy decision, including--

(i) a modification or revision of a policy decision of the Authority;

(ii) approval of a State or regional development plan; and

(iii) any allocation of funds among the States.

(3) PROJECT AND GRANT PROPOSALS- The approval of project and grant proposals shall be--

(A) a responsibility of the Authority; and

(B) conducted in accordance with section 302.

(4) VOTING BY ALTERNATE MEMBERS- An alternate member shall vote in the case of the absence, death, disability, removal, or resignation of the Federal or State member for which the alternate member is an alternate.

## **SEC. 102. DUTIES AND POWERS.**

(a) DUTIES- The Authority shall--

(1) develop comprehensive and coordinated plans and programs to establish priorities and approve grants for the economic development of the region, giving due consideration to other Federal, State, and local planning and development activities in the region;

(2) conduct and sponsor investigations, research, and studies, including an inventory and analysis of the resources of the region, using, in part, the materials compiled by the Interagency Task Force on the Economic Development of the Southwest Border established by Executive Order No. 13122 (64 Fed. Reg. 29201);

(3) sponsor demonstration projects under section 207;

(4)(A) enhance the capacity of, and provide support for, local development districts in the region; or

(B) if there is no local development district described in clause (i) of section 3(11)(A) for a portion of the region, foster the creation of a local development district;

(5) review and study Federal, State, and local public and private programs and, as appropriate, recommend modifications or additions to increase the effectiveness of the programs;

(6) formulate and recommend, as appropriate, interstate and international compacts and other forms of interstate and international cooperation;

(7) encourage private investment in industrial, commercial, and recreational projects in the region;

(8) provide a forum for consideration of the problems of the region and any proposed solutions to those problems;

(9) establish and use, as appropriate, citizens, special advisory counsels, and public conferences; and

(10) provide a coordinating mechanism to avoid duplication of efforts among the border programs of the Federal agencies and the programs established under the North American Free Trade Agreement entered into by the United States, Mexico, and Canada on December 17, 1992.

(b) POWERS- In carrying out subsection (a), the Authority may--

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute a description of the proceedings of, and reports on actions by, the Authority as the Authority considers appropriate;

(2) request from any Federal, State, or local agency such information as may be available to or procurable by the agency that may be of use to the Authority in carrying out the duties of the Authority;

(3) maintain an accurate and complete record of all transactions and activities of the Authority, to be available for audit and examination by the Comptroller General of the United States;

(4) adopt, amend, and repeal bylaws and rules governing the conduct of business and the performance of duties of the Authority;

(5) request the head of any Federal agency to detail to the Authority, for a specified period of time, such personnel as the Authority requires to carry out duties of the Authority, each such detail to be without loss of seniority, pay, or other employee status;

- (6) request the head of any State department or agency or local government to detail to the Authority, for a specified period of time, such personnel as the Authority requires to carry out the duties of the Authority, each such detail to be without loss of seniority, pay, or other employee status;
- (7) make recommendations to the President regarding--
  - (A) the expenditure of funds at the Federal, State, and local levels under this Act; and
  - (B) additional Federal, State, and local legislation that may be necessary to further the purposes of this Act;
- (8) provide for coverage of Authority employees in a suitable retirement and employee benefit system by--
  - (A) making arrangements or entering into contracts with any participating State government; or
  - (B) otherwise providing retirement and other employee benefit coverage;
- (9) accept, use, and dispose of gifts or donations of services or real, personal, tangible, or intangible property;
- (10) enter into and perform such contracts, leases, cooperative agreements, or other transactions as are necessary to carry out the duties of the Authority;
- (11) establish and maintain--
  - (A) a headquarters for the Authority, to be located at a site that is not more than 100 kilometers from the international border between the United States and Mexico; and
  - (B) at least 1 field office in each of the States of Arizona, California, New Mexico, and Texas, to be located at appropriate sites in the region that are not more than 100 kilometers from the international border between the United States and Mexico; and
- (12) provide for an appropriate level of representation in Washington, D.C.
- (c) FEDERAL AGENCY COOPERATION- A Federal agency shall--
  - (1) cooperate with the Authority; and
  - (2) provide, on request of the Federal cochairperson, appropriate assistance in carrying out this Act, in accordance with applicable Federal laws (including regulations).
- (d) ADMINISTRATIVE EXPENSES-
  - (1) IN GENERAL-
    - (A) ADMINISTRATIVE EXPENSES- Subject to paragraph (2), administrative expenses of the Authority shall be paid--
      - (i) by the Federal Government, in an amount equal to 60 percent of the administrative expenses; and
      - (ii) by the States in the region that elect to participate in the Authority, in an amount equal to 40 percent of the administrative expenses.
    - (B) EXPENSES OF FEDERAL CHAIRPERSON- All expenses of the Federal cochairperson, including expenses of the alternate and staff of the Federal cochairperson, shall be paid by the Federal Government.
  - (2) STATE SHARE-
    - (A) IN GENERAL- Subject to subparagraph (C), the share of administrative expenses of the Authority to be paid by each State shall be determined by a unanimous vote of the State members of the Authority.
    - (B) NO FEDERAL PARTICIPATION- The Federal cochairperson shall not participate or vote in any decision under subparagraph (A).
    - (C) LIMITATION- A State shall not pay less than 10 nor more than 40 percent of the share of administrative expenses of the Authority determined under paragraph (1)(A)(ii).
    - (D) DELINQUENT STATES- During any period in which a State is more than 1 year delinquent in payment of the State's share of administrative expenses of the Authority under this subsection (as determined by the Secretary)--
      - (i) no assistance under this Act shall be provided to the State (including assistance to a political subdivision or a resident of the State) for any project not approved as of the date of the commencement of the delinquency; and
      - (ii) no member of the Authority from the State shall participate or vote in any action by the Authority.



(E) EFFECT ON ASSISTANCE- A State's share of administrative expenses of the Authority under this subsection shall not be taken into consideration in determining the amount of assistance provided to the State under title II.

## **SEC. 103. AUTHORITY PERSONNEL MATTERS.**

### **(a) COMPENSATION OF MEMBERS-**

(1) FEDERAL COCHAIRPERSON- The Federal cochairperson shall be compensated by the Federal Government at the annual rate of basic pay prescribed for level III of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(2) ALTERNATE FEDERAL COCHAIRPERSON- The alternate Federal cochairperson--

(A) shall be compensated by the Federal Government at the annual rate of basic pay prescribed for level V of the Executive Schedule described in paragraph (1); and

(B) when not actively serving as an alternate for the Federal cochairperson, shall perform such functions and duties as are delegated by the Federal cochairperson.

(3) STATE MEMBERS AND ALTERNATES-

(A) IN GENERAL- A State shall compensate each member and alternate member representing the State on the Authority at the rate established by State law.

(B) NO ADDITIONAL COMPENSATION- No State member or alternate member shall receive any salary, or any contribution to or supplementation of salary, from any source other than the State for services provided by the member or alternate member to the Authority.

### **(b) DETAILED EMPLOYEES-**

(1) IN GENERAL- No person detailed to serve the Authority under section 102(b)(6) shall receive any salary, or any contribution to or supplementation of salary, for services provided to the Authority from--

(A) any source other than the State, local, or intergovernmental department or agency from which the person was detailed; or

(B) the Authority.

(2) VIOLATION- Any person that violates this subsection shall be fined not more than \$5,000, imprisoned not more than 1 year, or both.

### **(c) ADDITIONAL PERSONNEL-**

(1) COMPENSATION-

(A) IN GENERAL- The Authority may appoint and fix the compensation of an executive director and such other personnel as are necessary to enable the Authority to carry out the duties of the Authority.

(B) EXCEPTION- Compensation under subparagraph (A) shall not exceed the maximum rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of that title.

(2) EXECUTIVE DIRECTOR- The executive director shall be responsible for--

(A) carrying out the administrative duties of the Authority;

(B) directing the Authority staff; and

(C) carrying out such other duties as the Authority may assign.

(3) NO FEDERAL EMPLOYEE STATUS- No member, alternate, officer, or employee of the Authority (other than the Federal cochairperson, the alternate Federal cochairperson, staff of the Federal cochairperson, and any Federal employee detailed to the Authority under subsection (b)) shall be considered to be a Federal employee for any purpose.

### **(d) CONFLICTS OF INTEREST-**

(1) IN GENERAL- Except as provided under paragraph (2), no State member, State alternate, officer, employee, or detailee of the Authority shall participate personally and substantially as a member, alternate, officer, employee, or detailee of the Authority, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in any proceeding, application, request for a ruling or other determination, contract, claim, controversy, or other matter in which the member, alternate, officer, employee, or detailee has a financial interest.

(2) DISCLOSURE- Paragraph (1) shall not apply if the State member, State alternate, officer, employee, or detailee--

(A) immediately advises the Authority of the nature and circumstances of the proceeding,

application, request for a ruling or other determination, contract, claim, controversy, or other particular matter presenting a potential conflict of interest;

(B) makes full disclosure of the financial interest; and

(C) before the proceeding concerning the matter presenting the conflict of interest, receives a written determination by the Authority that the interest is not so substantial as to be likely to affect the integrity of the services that the Authority may expect from the State member, State alternate, officer, employee, or detailee.

(3) VIOLATION- Any person that violates this subsection shall be fined not more than \$10,000, imprisoned not more than 2 years, or both.

(e) VALIDITY OF CONTRACTS, LOANS, AND GRANTS- The Authority may declare void any contract, loan, or grant of or by the Authority in relation to which the Authority determines that there has been a violation of subsection (b), subsection (d), or any of sections 202 through 209 of title 18, United States Code.

(f) APPLICABLE LABOR STANDARDS-

(1) IN GENERAL- All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting and decorating, of projects, buildings, and works funded by the United States under this Act, shall be paid wages at not less than the prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a et seq.).

(2) AUTHORITY- With respect to the determination of wages under paragraph (1), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan No. 14 of 1950 (64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

## **TITLE II--GRANTS AND DEVELOPMENT PLANNING**

### **SEC. 201. INFRASTRUCTURE DEVELOPMENT AND IMPROVEMENT.**

The Authority may approve grants to States, local governments, Indian tribes, and public and nonprofit organizations in the region for projects, approved in accordance with section 302, to develop and improve the transportation, water and wastewater, public health, and telecommunications infrastructure of the region.

### **SEC. 202. TECHNOLOGY DEVELOPMENT AND DEPLOYMENT.**

The Authority may approve grants to small businesses, universities, national laboratories, and nonprofit organizations in the region to research, develop, demonstrate, and deploy technology that addresses--

- (1) water quality;
- (2) water quantity;
- (3) pollution;
- (4) transportation;
- (5) energy consumption;
- (6) public health;
- (7) border and port security; and
- (8) any other related matter that stimulates job creation or enhances economic development in the region, as determined by the Authority.

### **SEC. 203. COMMUNITY DEVELOPMENT AND ENTREPRENEURSHIP.**

The Authority may approve grants to States, local governments, Indian tribes, small businesses, and public or nonprofit entities for projects, approved in accordance with section 302--

- (1) to create dynamic local economies by--
  - (A) recruiting businesses to the region; and
  - (B) increasing and expanding international trade to other countries;
- (2) to foster entrepreneurship by--
  - (A) supporting the advancement of, and providing entrepreneurial training and education for, youths, students, and businesspersons;
  - (B) improving access to debt and equity capital by facilitating the establishment of development venture capital funds and other appropriate means;
  - (C) providing aid to communities in identifying, developing, and implementing development strategies for various sectors of the economy; and

- (D)(i) developing a working network of business incubators; and
- (ii) supporting entities that provide business incubator services; and
- (3) to promote civic responsibility and leadership through activities that include--
  - (A) the identification and training of emerging leaders;
  - (B) the encouragement of citizen participation; and
  - (C) the provision of assistance for strategic planning and organization development.

## **SEC. 204. EDUCATION AND WORKFORCE DEVELOPMENT.**

The Authority, in coordination with State and local workforce development boards, may approve grants to States, local governments, Indian tribes, small businesses, and public or nonprofit entities for projects, approved in accordance with section 302--

- (1) to assist the region in obtaining the job training, employment-related education, and business development (with an emphasis on entrepreneurship) that are needed to build and maintain strong local economies; and
- (2) to supplement in-plant training programs offered by State and local governments to attract new businesses to the region.

## **SEC. 205. FUNDING.**

- (a) IN GENERAL- Funds for grants under sections 201 through 204 may be provided--
  - (1) entirely from appropriations to carry out this Act;
  - (2) in combination with funds available under another Federal grant program or other Federal program; or
  - (3) in combination with funds from any other source, including--
    - (A) State and local governments, nonprofit organizations, and the private sector in the United States;
    - (B) the federal and local government of, and private sector in, Mexico; and
    - (C) the North American Development Bank.
- (b) PRIORITY OF FUNDING-
  - (1) IN GENERAL- Subject to paragraph (2), the Authority shall award funding to each State in the region for activities in accordance with an order of priority to be determined by the State.
  - (2) FUNDING FOR BORDER COUNTIES- For each fiscal year, the Authority shall allocate at least 60 percent of the amounts made available under section 306 for programs and projects designed to serve the needs of--
    - (A) distressed counties located along the international border between the United States and Mexico; and
    - (B) isolated areas of distress located within counties along the international border between the United States and Mexico.
- (c) BINATIONAL PROJECTS-
  - (1) PROHIBITION ON PROVISION OF FUNDING TO NON-UNITED STATES ENTITIES- The Authority shall not award funding to any entity that is not incorporated in the United States.
  - (2) FUNDING OF BINATIONAL PROJECTS- The Authority may award funding to a project in which an entity that is incorporated outside the United States participates if, for any fiscal year, the entity matches with an equal amount, in cash or in-kind, the assistance received under this Act for the fiscal year.

## **SEC. 206. SUPPLEMENTS TO FEDERAL GRANT PROGRAMS.**

- (a) FINDING- Congress finds that certain States and local communities of the region, including local development districts, may be unable to take maximum advantage of Federal grant programs for which the States and communities are eligible because--
  - (1) they lack the economic resources to provide the required matching share; or
  - (2) there are insufficient funds available under the Federal law authorizing the Federal grant program to meet pressing needs of the region.
- (b) FEDERAL GRANT PROGRAM FUNDING- Notwithstanding any provision of law limiting the Federal share, the areas eligible for assistance, or the authorizations of appropriations, under any Federal grant program,

and in accordance with subsection (c), the Authority, with the approval of the Federal cochairperson and with respect to a project to be carried out in the region, may--

(1) increase the Federal share of the costs of a project under any Federal grant program to not more than 90 percent (except as provided in section 209(b)); and

(2) use amounts made available to carry out this Act to pay all or a portion of the increased Federal share.

**(c) CERTIFICATIONS-**

(1) **IN GENERAL-** In the case of any project for which all or any portion of the basic Federal share of the costs of the project is proposed to be paid under this section, no Federal contribution shall be made until the Federal official administering the Federal law that authorizes the Federal grant program certifies that the project--

(A) meets (except as provided in subsection (b)) the applicable requirements of the applicable Federal grant program; and

(B) could be approved for Federal contribution under the Federal grant program if funds were available under the law for the project.

**(2) CERTIFICATION BY AUTHORITY-**

(A) **IN GENERAL-** The certifications and determinations required to be made by the Authority for approval of projects under this Act in accordance with section 302--

(i) shall be controlling; and

(ii) shall be accepted by the Federal agencies.

(B) **ACCEPTANCE BY FEDERAL COCHAIRPERSON-** In the case of any project described in paragraph (1), any finding, report, certification, or documentation required to be submitted with respect to the project to the head of the department, agency, or instrumentality of the Federal Government responsible for the administration of the Federal grant program under which the project is carried out shall be accepted by the Federal cochairperson.

## **SEC. 207. DEMONSTRATION PROJECTS.**

(a) **IN GENERAL-** For each fiscal year, the Authority may approve not more than 10 demonstration projects to carry out activities described in sections 201 through 204, of which not more than 3 shall be carried out in any 1 State.

(b) **REQUIREMENTS-** A demonstration project carried out under this section shall--

(1) be carried out on a multistate or multicounty basis; and

(2) be developed in accordance with the regional development plan prepared under section 210(d).

## **SEC. 208. LOCAL DEVELOPMENT DISTRICTS; CERTIFICATION AND ADMINISTRATIVE EXPENSES.**

(a) **GRANTS TO LOCAL DEVELOPMENT DISTRICTS-**

(1) **IN GENERAL-** The Authority shall make grants to local development districts to pay the administrative expenses of the local development districts.

(2) **CONDITIONS FOR GRANTS-**

(A) **MAXIMUM AMOUNT-** The amount of any grant awarded under paragraph (1) shall not exceed 80 percent of the administrative expenses of the local development district receiving the grant.

(B) **MAXIMUM PERIOD-** No grant described in paragraph (1) shall be awarded for a period greater than 3 years to a State agency certified as a local development district.

(C) **LOCAL SHARE-** The contributions of a local development district for administrative expenses may be in cash or in kind, fairly evaluated, including space, equipment, and services.

(b) **DUTIES OF LOCAL DEVELOPMENT DISTRICTS-** A local development district shall--

(1) operate as a lead organization serving multicounty areas in the region at the local level;

(2) assist the Authority in carrying out outreach activities for local governments, community development groups, the business community, and the public;

(3) serve as a liaison between State and local governments, nonprofit organizations (including community-based groups and educational institutions), the business community, and citizens; and

- (4) assist the individuals and entities described in paragraph (3) in identifying, assessing, and facilitating projects and programs to promote the economic development of the region.

## **SEC. 209. DISTRESSED COUNTIES AND AREAS AND ECONOMICALLY STRONG COUNTIES.**

(a) DESIGNATIONS- At the initial meeting of the Authority and annually thereafter, the Authority, in accordance with such criteria as the Authority may establish, shall designate--

- (1) distressed counties;
- (2) economically strong counties;
- (3) attainment counties;
- (4) competitive counties; and
- (5) isolated areas of distress.

(b) DISTRESSED COUNTIES-

(1) IN GENERAL- For each fiscal year, the Authority shall allocate at least 50 percent of the amounts made available under section 306 for programs and projects designed to serve the needs of distressed counties and isolated areas of distress in the region.

(2) FUNDING LIMITATIONS- The funding limitations under section 206(b) shall not apply to a project to provide transportation or basic public services to residents of 1 or more distressed counties or isolated areas of distress in the region.

(c) ECONOMICALLY STRONG COUNTIES-

(1) ATTAINMENT COUNTIES- Except as provided in paragraph (3), the Authority shall not provide funds for a project located in a county designated as an attainment county under subsection (a)(3).

(2) COMPETITIVE COUNTIES- Except as provided in paragraph (3), the Authority shall not provide more than 30 percent of the total cost of any project carried out in a county designated as a competitive county under subsection (a)(2)(B).

(3) EXCEPTIONS-

(A) IN GENERAL- The funding prohibition under paragraph (1) and the funding limitation under paragraph (2) shall not apply to grants to fund the administrative expenses of local development districts under section 208(a).

(B) MULTICOUNTY PROJECTS- If the Authority determines that a project could bring significant benefits to areas of the region outside an attainment or competitive county, the Authority may waive the application of the funding prohibition under paragraph (1) and the funding limitation under paragraph (2) to--

- (i) a multicounty project that includes participation by an attainment or competitive county; or
- (ii) any other type of project.

(4) ISOLATED AREAS OF DISTRESS- For a designation of an isolated area of distress for assistance to be effective, the designation shall be supported--

- (A) by the most recent Federal data available; or
- (B) if no recent Federal data are available, by the most recent data available through the government of the State in which the isolated area of distress is located.

## **SEC. 210. DEVELOPMENT PLANNING PROCESS.**

(a) STATE DEVELOPMENT PLAN- In accordance with policies established by the Authority, each State member shall submit an annual development plan for the area of the region represented by the State member to assist the Authority in determining funding priorities under section 205(b).

(b) CONSULTATION WITH INTERESTED PARTIES- In carrying out the development planning process (including the selection of programs and projects for assistance), a State shall--

(1) consult with--

- (A) local development districts; and
- (B) local units of government;

(2) take into consideration the goals, objectives, priorities, and recommendations of the entities described in paragraph (1); and

(3) solicit input on and take into consideration the potential impact of the State development plan on the binational region.

**(c) PUBLIC PARTICIPATION-**

(1) **IN GENERAL-** The Authority and applicable State and local development districts shall encourage and assist, to the maximum extent practicable, public participation in the development, revision, and implementation of all plans and programs under this Act.

(2) **REGULATIONS-** The Authority shall develop guidelines for providing public participation described in paragraph (1), including public hearings.

**(d) REGIONAL DEVELOPMENT PLAN-** The Authority shall prepare an annual regional development plan that--

(1) is based on State development plans submitted under subsection (a);

(2) takes into account--

(A) the input of the private sector, academia, and nongovernmental organizations; and

(B) the potential impact of the regional development plan on the binational region;

(3) establishes 5-year goals for the development of the region;

(4) identifies and recommends to the States--

(A) potential multistate or multicounty projects that further the goals for the region; and

(B) potential development projects for the binational region; and

(5) identifies and recommends to the Authority for funding demonstration projects under section 207.

### **TITLE III--ADMINISTRATION**

## **SEC. 301. PROGRAM DEVELOPMENT CRITERIA.**

(a) **IN GENERAL-** In considering programs and projects to be provided assistance under this Act, and in establishing a priority ranking of the requests for assistance provided to the Authority, the Authority shall follow procedures that ensure, to the maximum extent practicable, consideration of--

(1) the relationship of the project or class of projects to overall regional development;

(2) the per capita income and poverty and unemployment rates in an area;

(3) the financial resources available to the applicants for assistance seeking to carry out the project, with emphasis on ensuring that projects are adequately financed to maximize the probability of successful economic development;

(4) the socioeconomic importance of the project or class of projects in relation to other projects or classes of projects that may be in competition for the same funds;

(5) the prospects that the project for which assistance is sought will improve, on a continuing rather than a temporary basis, the opportunities for employment, the average level of income, or the economic development of the area to be served by the project; and

(6) the extent to which the project design provides for detailed outcome measurements by which grant expenditures and the results of the expenditures may be evaluated.

(b) **NO RELOCATION ASSISTANCE-** No financial assistance authorized by this Act shall be used to assist a person or entity in relocating from 1 area to another, except that financial assistance may be used as otherwise authorized by this Act to attract businesses from outside the region to the region.

(c) **MAINTENANCE OF EFFORT-** Funds may be provided for a program or project in a State under this Act only if the Authority determines that the level of Federal or State financial assistance provided under a law other than this Act, for the same type of program or project in the same area of the State within the region, will not be reduced as a result of funds made available by this Act.

## **SEC. 302. APPROVAL OF DEVELOPMENT PLANS AND PROJECTS.**

(a) **IN GENERAL-** A State or regional development plan or any multistate subregional plan that is proposed for development under this Act shall be reviewed by the Authority.

(b) **EVALUATION BY STATE MEMBER-** An application for a grant or any other assistance for a project under this Act shall be made through and evaluated for approval by the State member of the Authority representing the applicant.

(c) **CERTIFICATION-** An application for a grant or other assistance for a project shall be approved only on certification by the State member that the application for the project--

(1) describes ways in which the project complies with any applicable State development plan;

(2) meets applicable criteria under section 301;

- (3) provides adequate assurance that the proposed project will be properly administered, operated, and maintained; and
- (4) otherwise meets the requirements of this Act.
- (d) VOTES FOR DECISIONS- On certification by a State member of the Authority of an application for a grant or other assistance for a specific project under this section, an affirmative vote of the Authority under section 101(d) shall be required for approval of the application.

## **SEC. 303. CONSENT OF STATES.**

Nothing in this Act requires any State to engage in or accept any program under this Act without the consent of the State.

## **SEC. 304. RECORDS.**

- (a) RECORDS OF THE AUTHORITY-
  - (1) IN GENERAL- The Authority shall maintain accurate and complete records of all transactions and activities of the Authority.
  - (2) AVAILABILITY- All records of the Authority shall be available for audit and examination by the Comptroller General of the United States (including authorized representatives of the Comptroller General).
- (b) RECORDS OF RECIPIENTS OF FEDERAL ASSISTANCE-
  - (1) IN GENERAL- A recipient of Federal funds under this Act shall, as required by the Authority, maintain accurate and complete records of transactions and activities financed with Federal funds and report to the Authority on the transactions and activities.
  - (2) AVAILABILITY- All records required under paragraph (1) shall be available for audit by the Comptroller General of the United States and the Authority (including authorized representatives of the Comptroller General and the Authority).
- (c) ANNUAL AUDIT- The Comptroller General of the United States shall audit the activities, transactions, and records of the Authority on an annual basis.

## **SEC. 305. ANNUAL REPORT.**

- (a) IN GENERAL- Not later than 180 days after the end of each fiscal year, the Authority shall submit to the President and to Congress a report describing the activities carried out under this Act.
- (b) CONTENTS-
  - (1) IN GENERAL- The report shall include--
    - (A) an evaluation of the progress of the Authority--
      - (i) in meeting the goals set forth in the regional development plan and the State development plans; and
      - (ii) in working with other Federal agencies and the border programs administered by the Federal agencies;
    - (B) examples of notable projects in each State;
    - (C) a description of all demonstration projects funded under section 306(b) during the fiscal year preceding submission of the report; and
    - (D) any policy recommendations approved by the Authority.
  - (2) INITIAL REPORT- In addition to the contents specified in paragraph (1), the initial report submitted under this section shall include--
    - (A) a determination as to whether the creation of a loan fund to be administered by the Authority is necessary; and
    - (B) if the Authority determines that a loan fund is necessary--
      - (i) a request for the authority to establish a loan fund; and
      - (ii) a description of the eligibility criteria and performance requirements for the loans.

## **SEC. 306. AUTHORIZATION OF APPROPRIATIONS.**

- (a) IN GENERAL- There are authorized to be appropriated to the Authority to carry out this Act, to remain available until expended--
  - (1) \$50,000,000 for fiscal year 2004;

- (2) \$75,000,000 for fiscal year 2005;
- (3) \$90,000,000 for fiscal year 2006;
- (4) \$92,000,000 for fiscal year 2007; and
- (5) \$94,000,000 for fiscal year 2008.

(b) DEMONSTRATION PROJECTS- Of the funds made available under subsection (a), \$5,000,000 for each fiscal year shall be available to the Authority to carry out section 207.

### **SEC. 307. TERMINATION OF AUTHORITY.**

The authority provided by this Act terminates effective October 1, 2008.

*END*